

**Conservation Commission
November 1, 2021
Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:33p.m. Ms. McClees read the protocol for Zoom meetings and open Public Meeting Law.

Ms. McClees advised that the meeting was being conducted remotely, consistent with Chapter 20 of the Acts of 2021. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date and some attendees participated by phone and video conference and used chat on Zoom.

2. Quorum/Attendance: Present: Chairman, Geoff Haworth, Karen Isherwood, Gary Lavalette, Michael Kelly, Jake Galary, and Amy DeSalvatore. Non-voting consultant, Ron Medina was also present. All members were attending via zoom. Staff: Whitney McClees, Conservation Agent
Absent: Corey Pietraszek
3. Review and approve minutes
Mr. Haworth made a motion to approve the minutes of October 18, 2021 with an amendment on page 5, line 199, to state Mr. Miguel never told Mr. Gioiosa there was cease and desist. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (6-0).
4. **Continued to a Future Meeting**
 - a) SE 023-1356, CON 023-229: **12-18 Rio Way – *continued to November 15, 2021***
Notice of Intent filed by George Mock, Nye Lubricants, Inc., for stormwater upgrades and reductions in impervious surface associated with building upgrades at the property located at 12-18 Rio Way, Assessors Map 19, Lot 242. Work to take place in the Riverfront Area and 100-foot buffer zones to Coastal Bank and Coastal Beach.

Request for Continuance

- b) SE 023-1345, CON 023-206: **2 Oxford Street**
Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Coastal Beach.

Currently, the file is going through the Zoning Board of Appeals and the applicant would like to continue on December 13, 2021.

Mr. Haworth made a motion to issue a continuance at the applicant's request for 2 Oxford Street, SE 023-1345, CON 023-206 until December 13, 2021 and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (6-0).

Abbreviated Notice of Resource Area Delineation**c) SE 023-____, CON 023-251: Bridge Street, Map 36, Lot 15J**

Abbreviated Notice of Resource Area Delineation filed by Paul Downey, Fairhaven Properties, LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection Act and Fairhaven Wetlands Bylaw at the property located at Bridge Street, Assessors Map 36, Lot 15J.

Ms. McClees explained there has not been a DEP file number assigned yet, so the public hearing cannot be closed. Typically, with an Abbreviated Notice of Resource Area Delineation, the Commission has elected to have a peer reviewer to confirm submissions from the applicant. If the Commission would like to move forward, it was recommended to initiate the process during the meeting rather than wait for the applicant to come and present. Hopefully, that will allow a peer review that will be in accordance with the Fairhaven Winter Delineation Regulations, associated with the Fairhaven Wetlands Bylaw. If the Commission would like to move forward with the peer review, LAM Ecological has submitted their proposal to do so. Ms. McClees recommended making a motion to go further in the process, such as submitting a peer review deposit for \$2,500. The deposit is a little higher than the quote, just in case the peer reviewer needs to go back out to the site for any reason, but it is consistent with the Commission's fee schedule.

Mr. Haworth made a motion to accept the cost proposal from LAM Ecological for a peer review of the October 12, 2021 ANRAD filing, which includes one set of MA DEP Bordering Vegetated Wetland Field Data Forms prepared by Avizinis Environmental Services, Inc. for Bridge Street, Map 36, Lot 15J, SE 023-____, CON 023-251; the Commission requests a \$2,500 deposit for the peer review and Ms. McClees will coordinate the peer review process. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (6-0).

Request for Amended Order of Conditions**d) SE 023-1300, CON 19-055: 25 Abbey Street**

Request for Amended Order of Conditions filed after-the-fact by Agostinho Pinto for the replacement of grass with gravel and mixed fill to improve drainage and prevent ponding at the property located at 25 Abbey Street, Assessors Map 6, Lot 102. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed for the Commission that a site visit was conducted on the property last week. The site visit was conducted due to the cease and desist posted by Mr. Haworth for no DEP sign posted, no erosion control, removal of 6 inches of topsoil and grass, placement of fill, and the relocation of the scraped area in the rear of the property at the wetland edge. The applicant is requesting an amended order of conditions to scrape off the top layer of dirt along the property line between the garage and fence, replace it with mixed fill and permeable stone to resolve drainage issues to the southwest corner of the lot. Also, to remove fill deposited at the edge of the wetland and moving erosion control closer to the fence line to accommodate the above work.

The property owner contacted the Conservation office immediately after the cease and desist was posted and scheduled a site visit. Ms. McClees discussed at the site visit that had erosion control been properly maintained during the duration of the project there would not have been as much of an issue. The site visit was done in the rain to see the water pooling in the

southwestern corner of the property, due to a slight pitch from the back of the property to the front of the property. This is the issue the applicant is looking to rectify. Based on spot grades in the plan there is a slight depression on the front corner. The applicant originally proposed this entire area to be mixed fill and gravel, but subsequent to the site visit, he revised the plan to have just the front portion of the area mixed fill and crushed stone, as well as restoring the back portion that's within the 25–50-foot buffer to grass. The fill will be removed and arborvitaes will be planted around three sides of the property, to help with water filtration and drainage.

The Commission also had concerns about a storage container that is being stored next to the garage. In revising the plan, the applicant indicated he would be amenable to moving that storage container further toward the road and away from the wetland. The DEP Standard Conditions and the Commission's Order of Conditions prohibit fill that has debris, such as bricks, glass, etc. It is possible that fill already placed will need to be removed and replaced with clean fill to be properly compliant.

Revisions have been submitted to address the Commission's concerns based on the site visit. The Commission would like to see other conditions incorporated into Ms. McClees' draft. These conditions include addressing the mixed fill and the area of crushed stone. Ms. McClees also recommended no activity in the buffer zone that results in any sort of sedimentation or contaminated surface runoff into the wetland resource area. This will be an ongoing condition that will be recorded as part of the Certificate of Compliance

The applicant, Gus Pinto, was online and agreed with Ms. McClees' summary and asked if Board would like to add anything.

Ms. DeSalvatore stated the storage container is acting as an impervious surface and moving it forward would allow greater filtration into the resource area. She also asked Mr. Pinto who would be removing the fill.

Mr. Pinto responded that Cardoza Construction will be responsible for that project.

Ms. McClees added that to remove the fill next to the wetland now would cause more damage to the resource area, since it is too saturated. They should pull back what was pushed in for now, which shouldn't cause any additional damage and will allow the area to revegetate.

Ms. Isherwood had filtration concerns since the property pitches toward the wetlands. She believes a professional would give the Commission a better understanding on solving the water issue pooling in the yard. Planting arborvitaes will definitely help, but it will not resolve the issue immediately. She would also like to see adding clean fill and crushed stone to the conditions, but no crushed stone 0-50 feet from the wetlands.

Mr. Lavalette attended site visit, and wants to see the storage container moved away from the wetlands. There should be no activity in the buffer zone.

Mr. Pinto replied that the storage container is needed for building materials for the construction of his house. He would be willing to raise it up.

Action: Ms. McClees will check with the Building Commissioner regarding FEMA flood zone regulations and what is allowable in a velocity flood zone for things like storage containers.

Sheds in velocity flood zones are not permitted to be more than 100 square feet, but the classification for storage containers is unclear.

Mr. Lavalette believes the fence is compliant, but there will need to be clearance on the fence.

Ms. McClees clarified fences in the velocity flood zone should be at least 6 inches from the ground, while maintaining the 6-foot height limit for the zoning regulation.

Ms. Isherwood asked if the storage container is considered a permanent structure. Mr. Haworth stated it has been there for more than two years, so that is a decision for the Building Department.

Mr. Haworth cited that the stockade fence is too high and should be addressed by the Building Department.

Action: Ms. McClees to refer above to the Building Commissioner.

Mr. Haworth believed the contractor had pushed beyond the property line into the wetland and he wants to make sure that area gets properly restored. He would like specifics outlined, in order for the Commission's intent to be met.

Ms. McClees noted there is 160 feet along back of the property, which would equate to approximately 50 arborvitaes.

Mr. Haworth stated the importance of maintaining proper erosion control. The silt fence should have gone up before the old house was demolished, since they are required to maintain erosion control until the new home is built. Another zoning violation is the accessory structure without a primary structure.

Ms. McClees stated the Order of Conditions was issued in 2019 and believes the house was demolished not too long after.

Mr. Haworth stated the applicant has until next year under the Order of Conditions. The gravel stone must be clean fill to avoid washing off into the wetlands.

Ms. McClees maintained erosion control has been reestablished along back of the property and fence line. Since it is such a flat site, it does have to sheet feed along the entire lawn before getting to the rear of the property. Establishing erosion control is important, which they have accomplished along the edge of the property, between the exposed and resource areas.

Ms. DeSalvatore questioned that on the current diagram the gravel ends after the 50-foot buffer zone line. She'd like to see it end at the 50-foot line.

Ms. McClees stated one of the draft conditions does address this line. Right now, gravel extends about 5 or so feet past the 50-foot line.

Ms. Isherwood inquired if the Commission will know if the gravel is clean fill. If we can see that it will properly divert the water toward the drainage ditch and how much will drain back toward the wetland. Also, would like the storage container out of 50-foot buffer zone. If crushed stone isn't allowed in the 50 to 0 then the container would move onto the crushed stone.

Ms. McClees stated the plan does have arrows showing directionality where the water is going to be directed. Grade changes are very slight and with such a low pitch, it will not travel back to the wetlands.

Mr. Haworth made a motion to close the public hearing for 25 Abbey Street, SE 023-1300, CON 19-055 and issue an Amended Order of Conditions with the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the 47 conditions as outlined in the October 27, 2021 staff report. Also included are the additional conditions that mixed fill shall not be permitted and any mixed fill already on site should be removed and replaced with clean fill. Any fill used for this project shall not contain trash, refuse, rubbish or debris, including but not limited to lumber,

bricks, plastic, wire, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or any other parts of the previously stated. Crushed stone is permitted in the following area of the property; between the existing driveway and stockade fence from the property line at Abbey Street to the 50-foot buffer zone line and no further. The area between the garage and stockade fence and the 50-foot buffer zone line to the rear of the property should have the fill removed and be loamed, seeded, and restored to the line. It shall be noted in the Certificate of Compliance as an ongoing condition that there shall be no activity within the buffer zone that results in sedimentation or contaminated surface runoff into the wetland resource area. These conditions are added to the original 47 conditions listed in the staff report. Part of the motion is to approve plans dated October 27, 2021. Motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (6-0).

Notice of Intent

e) **SE 023-1365, CON 023-250: 86-88 Middle Street**

Notice of Intent filed by Patrick Carr, A1 Crane Company, for the installation of a 968-square-foot concrete pad for fuel tank storage at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E & 7. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees gave an update explaining the notice was withdrawn due to a lack of voting quorum, and since then, the applicant has switched engineers. To allow some work to move forward, the applicant is looking to start the process with this filing and install a 986-square-foot concrete pad to move the fuel tanks away from residential areas. To alleviate safety concerns, the Fire Department and Building Commissioner are asking to have them relocated and properly tied down.

The applicant's engineer has completed a detailed survey of the property and is in the process of putting together stormwater information. If the Commission approves this Order of Conditions tonight, a new site plan will be submitted that shows the current conditions of the property. The applicant will then request an Amended Order of Conditions to address the remainder of the concrete work on the property, and will have all stormwater calculations for the property.

The concrete pad is necessary for safety and will not have any negative impact on storm damage prevention or flood control. The properties on either side are completely impervious. Any stormwater treatment that would be needed will be addressed within this project. The engineer is working on larger storm water calculations for submittal to the Commission. The applicant is submitting this project in two stages to ensure the concrete work is completed before winter. The applicant elected to submit Notice of Intent to at least address the moving of fuel tanks. His engineer will be submitting the remainder subsequently, if the Commission issues an Order of Conditions as a request to amend.

Owner of A.1. Crane, Mr. Carr, thanked Ms. McClees in obtaining the plans to satisfy the Building Commissioner's concerns. Moving the tanks to the other side will have to support 30,000 pounds; therefore, the concrete pad will be 8-inches in depth and be tied down securely to the concrete pad. Mr. Carr's goal is to successfully move the tanks, while waiting to get to the second portion of intent.

Ms. DeSalvatore presented her concerns that the stormwater effect is not calculated, as of now. She would like to see a timeline for submission of the remainder.

Ms. McClees stated, Rich Rheume, from Prime Engineering has submitted filing fees and confirmed everything is set for the November 15, 2021 meeting. After formal plans from the engineer, Ms. McClees will be scheduling a site visit.

Mr. Lavalette thinks it's a great plan that will satisfy the Fire Department.

Mr. Galary would like to see the pad completed and then move forward.

Mr. Haworth was also in agreement and believes this ensures the greater good of properly storing fuel on site. He supports moving forward with the understanding that the Commission will see the filing for the second part of the project on November 15, 2021.

Mr. Haworth made motion to close the hearing for 86-88 Middle Street SE 023-1365, CON 023-250 and issue an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the 24 conditions as found in the staff report of October 26, 2021 and approve plans dated October 26, 2021. The motion was seconded by Mr. Galary and passed unanimously via roll call vote (6-0).

Mr. Haworth made motion to allow Mr., Carr to go up to 25 feet for the installation of the concrete pad and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (6-0).

2. Violations/Enforcement Orders/Cease and Desist Notices

a) 20 Yankee Lane

Ms. McClees gave a brief update, but a revision is still required. She recommended the Commission make a motion related to a more specific timeline on the pieces of this plan. Phases should be implemented, instead of approving as one whole restoration plan. If they can have detailed plans of the phases to be completed between now and Spring 2022 submitted by November 8, 2021, she will have a chance to review and provide comments. In this scenario, the applicant can expect something approvable by the Commission for the November 15, 2021 meeting. Work will be able to begin this fall, concurrently with calculations for restoration of the stream.

Mr. Haworth agreed that this would allow for an easy-to-follow progression of the project.

Ms. Isherwood would like to see a permanent timeline and a discussion about fines, if we don't approve the next revised plan.

Ms. McClees stated that as part of the timeline, if we do not have an approvable plan by the November 15, 2021 meeting for at least the first 2 to 3 phases, then the Commission could consider a \$300 per day fine until an approvable plan is submitted. Then a revised plan would be required by the end of February for the rest of the project. This way Ms. McClees has time to review and the Commission will have time to determine if a peer review is necessary.

Mr. Haworth made a motion that the property owner at 20 Yankee Lane submit a timeline and layout of the first phase of the project by November 8, 2021 and was seconded by Ms. DeSalvatore. The motion passed unanimously via a roll call vote (6-0).

3. Correspondence

Ms. McClees received notice from MACC that Ms. Isherwood completed her Fundamentals Certificate; she has taken all the required courses that MACC outlines Conservation Commissioners, which is a total of 8 courses.

4. Ongoing Projects

a) SE 023-1340, CON 023-195: **1 Bella Vista Island**

Mr. Haworth discussed the letter received from Rich Rheume of Prime Engineering, which is included in the staff report. The letter proposes to remove fruit trees, shrubs, water works, lights and electrical work and to be completed prior to December 1, 2021. The exposed earth will be stabilized and covered with jute netting. Removal of the lawn will be initiated between April 1, 2022 and April 15, 2022 and to be completed by May 15, 2022. The lawn will be seeded immediately upon removal of the turf and monitored daily for watering. When watering is needed it will be done as necessary to establish a stable meadow.

Ms. McClees confirms for the Commission that there is a third-party oversight on the project as well.

Mr. Haworth made a motion that we allow Prime Engineering to follow this timeline as long as they follow the Order of Conditions and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

5. Upcoming Projects

Ms. McClees stated she posted upcoming projects on the website.

For the next meeting, the Commission will review 86-88 Middle Street, which has been previously discussed.

A request for an amended Order of Conditions for seawall groin work for 1 Bella Vista Island, will be reviewed. The applicant is looking for further clarification and some revision of the special conditions from the Order of Conditions that the Commission issued. They have concerns regarding the timelines.

There is a Notice of Intent for 184 Balsam Street for a fixed pier and floating dock.

The Commission received a request for determination for 36 Monadnock Avenue for a seashell driveway and another Abbreviated Notice of Resource Area Delineation for part of Bridge Street.

6. General Business

a) Bills:

\$55 to MACC training course for Ms. DeSalvatore

\$85 to Fairhaven Neighborhood News for October 18, 2021 meeting legal ads.

\$1,200 to Evan Melillo for grant assistance in the electric vehicle incentive program. The town is receiving assistance and coordinating with a grant manager out of the contracted services budget.

b) Review 2022 Meeting Schedule

Mr. Haworth has conflict on August 1, 2022.

Ms. McClees suggested 6-month blocks for scheduling.

Mr. Haworth made a motion that the Commission approve the 2022 meeting dates from January 3 to June 13 as outlined in the tentative 2022 meeting date sheet and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

c) Next Meeting: November 15, 2021

Mr. Haworth brought up if any member cannot make a meeting to please notify Ms. McClees or Mr. Haworth.

7. **Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Mr. Haworth made motion to adjourn at and was seconded by Mr. Galary. Motion passed unanimously via roll call at 7:57p.m. (6-0).

Respectfully submitted,

Kelly Camara

Recording Secretary